

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III

IN THE MATTER OF:

ATLANTIC WOOD INDUSTRIES, INC.  
(a Georgia corporation)  
PORTSMOUTH, VIRGINIA

RESPONDENT

Proceeding Under Section 106(a)  
of the Comprehensive Environmental  
Response, Compensation, and  
Liability Act of 1980, as amended  
(42 U.S.C. § 9606(a))

US EPA Docket No.

*III - 87-24-DC*

ADMINISTRATIVE ORDER  
BY CONSENT

I. JURISDICTION

This Consent Order is issued pursuant to the authority vested in the President of the United States by Sections 104(b), 106(a) and 122(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9604(b), 9606(a) and 9622(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986). This authority was delegated to the Administrator of the United States Environmental Protection Agency ("EPA") on January 29, 1987, by Executive Order 12580, 52 Fed. Reg. 2923, and further delegated to the Regional

AR200001

Administrators by EPA Delegation Nos. 14-14-A and 14-14-C on February 26, 1987.

Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. The Respondent consents to and will not contest EPA jurisdiction regarding this Consent Order. If the actions required hereunder were not performed by Respondent, such actions would be performed by EPA and EPA would seek to recover the costs of such actions from Respondent. Furthermore, it is EPA's position that it could seek treble damages under CERCLA if Respondent refused to undertake the actions required in this Consent Order without sufficient cause. The Respondent does not admit to any of the factual or legal conclusions or determinations made by EPA in Articles III and IV of this Consent Order, and reserves all rights and defenses which the Respondent may have regarding liability or responsibility in any subsequent proceedings regarding the site, whether initiated by EPA or others, except that Respondent waives any right it may have to seek reimbursement from the Hazardous Substances Superfund, pursuant to Section 106(b)(2) of CERCLA, 42 U.S.C. § 9606(b)(2), for response costs incurred in complying with this Order. Neither this Consent Order nor any finding of fact, determination or conclusion contained herein shall have or be given any evidentiary, estoppel or preclusive effect, provided, however, that in the event of action by EPA to enforce the terms of this Consent Order, or to recover response costs as provided in Article XVI.D.1(b) and 2, Respondent agrees not to contest the findings of fact or conclusions of law in Articles III and IV of this Consent Order.

AR200002

In the event that the Atlantic Wood Industries, Inc. Facility is removed from the National Priorities List ("NPL"), 40 C.F.R. Part 300, App. B, the provisions of this Consent Order pertaining to the performance of a Remedial Investigation and Feasibility Study ("RI/FS") shall cease to be effective and the parties shall have no further obligation to perform the RI/FS under this Consent Order.

## II. STATEMENT OF PURPOSE

In entering into this Consent Order, the mutual objectives of EPA and the Respondent are: 1) the performance of certain immediate removal actions at this site to address environmental damage; and 2) the performance of an RI/FS for the same site. The activities conducted pursuant to this Consent Order shall be consistent with the National Oil and Hazardous Substances Contingency Plan, 40 C.F.R. Part 300, as revised at 50 Fed. Reg. 47912 (November 20, 1985) ("NCP").

## III. FINDINGS OF FACT

The Regional Administrator has determined that:

- A. The respondent is Atlantic Wood Industries, Inc. ("Respondent"), a Georgia corporation whose principal office is located in Savannah, Georgia.
- B. The Savannah Creosoting Company, a Maryland Corporation, purchased a wood preserving plant located at 3950 Elm Avenue, Portsmouth, Virginia 23704 in 1926. From 1926 until 1944, additional parcels of land were added to the plant. On December 28, 1944, the name of the Savannah Creosoting Corporation

AR200003

was changed to Atlantic Creosoting Company, Inc.. On September 1, 1978, the name of the corporation was changed to Atlantic Wood Industries, Inc. Finally, on October 25, 1985, the name of the corporation was changed to Atlantic Wood Assets, Inc. On June 19, 1985, a Georgia corporation named Atlantic Interim Inc. was incorporated. Its name was changed on November 21, 1985, to Atlantic Wood Industries, Inc. On November 30, 1985, the operating assets of Atlantic Wood Assets, Inc., including the wood preserving plant referred to above, were sold to Atlantic Wood Industries, Inc., the Georgia corporation. Since that time, Atlantic Wood Industries, Inc., the Georgia corporation, has owned and operated the plant.

On January 1, 1986, all of the stock of Atlantic Wood Industries, Inc., the Georgia corporation, was sold to, and has since then been owned by, an Employee Stock Ownership Plan for the benefit of the Georgia corporation's employees.

According to Respondent, since December 1985, the present owners, managers and employees of Atlantic Wood Industries, Inc., the Georgia corporation, have had no connection with Atlantic Wood Assets, Inc., the Maryland corporation, or its owners.

- C. The wood preserving plant referred to in Paragraph B, above, currently occupies 47.5 acres of land bounded on the north by Elm Street, on the west by a Virginia Electric and Power Company right of way, on the south by property owned by the United States and the Portsmouth City School Board, respectively, and

AR200004

on the east by the South Branch of the Elizabeth River (the "Facility"). (See Attachment A.)

- D. Since at least 1940, four large storage tanks were located on the north portion of the Facility, along Elm Street. The tanks were used to store wood preservative chemicals, including creosote, and process water used in wood treatment operations which may have contained pentachlorophenol ("PCP"). Two of these tanks were removed in 1985, and the last two were removed by June, 1986.
- E. Two smaller in-line process tanks for wood preservative chemicals are located southeast of the area formerly occupied by the four large tanks referred to in Paragraph D.
- F. A wood treatment building and treatment cylinders, and three additional storage tanks for wood preservatives, are located at the Facility south of the areas described in Paragraphs D and E, in the central portion of the Facility.
- G. A filled, unlined area in the southwest corner of the property may contain up to 20,000 ft<sup>3</sup> of general debris, steel bands, untreated and treated wood waste, and cylinder and tank clean out material which may contain creosote and PCP. This area was operated from at least 1966 until 1982.
- H. From at least 1940 until October 1985, a concrete pit was located in the central portion of the Facility. According to Respondent, this pit was used to recycle process wood preservative chemicals.

AR200005

- I. A storm sewer is located along Elm Avenue, the northern boundary of the Facility. The sewer runs from drainage areas in the City of Portsmouth west to east along the entire length of the area formerly occupied by the large storage tanks. This sewer discharges into the South Branch of the Elizabeth River at the northeastern corner of the Facility.
- J. An open drainage channel carries stormwater from the north side of the cylinder treatment area (see Paragraph F) and discharges into the South Branch of the Elizabeth River. This discharge ("Outfall 002") is permitted under the National Pollution Discharge Elimination System ("NPDES").
- K. Two additional discharge points are permitted under an NPDES Permit. Outfall 001 discharges stormwater from the southeastern storage yard into the South Branch of the Elizabeth River. Outfall 003 discharges stormwater from the west yard into an open drainage channel west of the site.
- L. Sampling conducted by EPA, the Virginia Water Control Board ("VWCB"), and Respondent during the past two years has revealed the presence of naphthalene, phenanthrene, fluoranthene, anthracene, pyrene, and benzo(a)pyrene, which are associated with wood treatment at the Facility. Certain of these substances have been found either in onsite soils or groundwater, in the storm sewer, contiguous to the Facility or in the air above the Facility.

AR200006

- M. The area surrounding the site is generally flat with an eastern slope toward the South Branch of the Elizabeth River.. The area surrounding the site is zoned for industrial use. Other wood treating facilities that were not owned by the Respondent have been located in the past near the Facility.
- N. There are two separate water-bearing zones underlying the area in which the Facility is located. The first water-bearing zone is 12 to 18 feet below the surface. The second water-bearing zone is 40 feet below the surface and is separated from the first zone by a blue clay layer. The lower aquifer contains fresh water. Due to salt water encroachment, the shallow or upper aquifer has become brackish.
- O. Groundwater analyses conducted by the VWCB, as well as visual observations, indicate that creosote has leaked from the four large tanks.
- P. Releases of wood treating chemicals described in Paragraph L have occurred. Events such as leaks from the bottoms of the tanks referred to in Paragraph D, as well as releases onto facility soils, have resulted in migration into groundwater beneath the site and to sediments and storm water flowing offsite.
- Q. The substances referenced in Paragraph L have the following toxicological properties:
- Naphthalene, phenanthrene, fluoranthene, anthracene, pyrene and benzo(a)pyrene are all polynuclear aromatic hydrocarbons

AR200007

("PAHs"). Some PAHs have been shown to be carcinogenic in test animals. Benzo(a)pyrene is also a known carcinogen in humans. EPA has determined that for all of the foregoing substances, the  $10^{-6}$  cancer risk factor is 0.003 parts per billion ("ppb").

Creosote is a mixture of substances, largely PAH's and cresol. The Acceptable Daily Intake ("ADI") for cresols is 1 part per billion based upon the threshold limit values in the workplace.

Pentachlorophenol ("PCP") has an ADI of 10,500 ppb. Pure, technical grade PCP is usually contaminated with at least  $10^{-5}$  parts hexachlorinated dibenzodioxin ("HxCDD"). The  $10^{-6}$  cancer risk factor for HxCDD is .000005 ppb.

Benzene is a known human carcinogen with a  $10^{-6}$  cancer risk factor of 0.66 ppb.

The  $10^{-6}$  risk factor for a particular substance is calculated from laboratory animal cancer experiments and represents the concentration of a substance in water that is expected to produce no more than one additional case of cancer in a population of one million persons, each of whom consumes two liters per day of the contaminated water for 70 years. An Acceptable Daily Intake ("ADI") is the exposure level which would be without significant risk to humans when received daily over a lifetime. The ADI is determined by dividing the No Observable Adverse Effect Level ("NOAEL") by an appropriate uncertainty factor. (See 49 Fed. Reg. 24336 (June 12, 1984).

AR200008



- R. The South Branch of the Elizabeth River, which borders the Facility to the east, is an estuarine, tidal water body. This river is used for recreational crabbing approximately 4,000 feet upstream of the Facility and contains oyster beds four miles downstream of the Facility. The Facility is approximately seven miles upstream of the Chesapeake Bay.
- S. Coastal wetlands of greater than 5 acres occur within a mile of the site. The wetlands are located upstream on a reach of the river under significant tidal influence.
- T. An estimated 8,400 to 14,000 people work within a one-half mile radius of the Facility. Residential areas are located within 4000 feet of the Facility. Residential population within a 4 mile radius of the Facility is approximately 77,000.
- U. There are no barriers preventing access to the storm sewer.
- V. The Facility has been proposed for inclusion on the National Priorities List ("NPL"), in accordance with Section 105(a) of CERCLA, 42 U.S.C. § 19605(8). See 51 Fed. Reg. 21099 (June 10, 1986).

#### IV. CONCLUSIONS OF LAW

The Regional Administrator has concluded that:

- A. The Facility is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

AR200009

- B. Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
- C. The substances described in Paragraph L of the Findings of Fact are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- D. The hazardous substances described in Paragraph L have been released and/or threaten to be released from the Facility into the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

#### V. DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law set forth above, the Regional Administrator has determined that:

- A. An actual and/or threatened release of hazardous substances from the Facility may present an imminent and substantial endangerment to the public health or welfare or the environment.
- B. The actions required by this Consent Order, which the Respondent has agreed to perform, are necessary to protect the public health or welfare or the environment.
- C. Respondent is qualified to conduct an RI/FS for the Facility and will properly conduct the response actions required hereunder if Respondent complies with the terms of Article VIII of this Consent Order.

AR200010

VI. PARTIES BOUND

This Consent Order shall apply to and be binding upon Respondent and EPA, their agents, successors, and assigns. Notice of this Consent Order shall be given to all persons, contractors, and consultants acting in connection with the work required herein.

In the event of any change in ownership or control of the Facility, Respondent shall notify EPA in writing of such change and shall provide a copy of this Consent Order to the transferee in interest. Changes in ownership or control of the Facility shall not affect Respondent's obligations under this Consent Order.

VII. NOTICE TO STATE

Notice of issuance of this Consent Order has been given to the Commonwealth of Virginia, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), by notice to:

Ms. Pauline Ewald  
Superfund Supervisor  
Department of Waste Management  
Eleventh Floor, Monroe Building  
101 North 14th Street  
Richmond, Virginia 23219

Cynthia Bailey, Director  
Department of Waste Management  
Eleventh Floor, Monroe Building  
101 North 14th Street  
Richmond, Virginia 23219

VIII. WORK TO BE PERFORMED

A. Selection of Contractors

1. All response work to be performed pursuant to this Consent Order shall be under the direction and supervision of qualified personnel with experience in hazardous waste site cleanup. Respondent shall notify EPA in writing at least fourteen (14) days prior

AR200011

to initiation of any site work hereunder of the identity and qualifications of any supervisory personnel, and any contractor and/or subcontractors to be used in carrying out the terms of this Consent Order.

2. EPA may disapprove the use of any supervisory personnel, contractor and/or subcontractor (including any substitute supervisory personnel, contractor or subcontractor selected by Respondent under Section A.3.a. of this Article) if EPA finds that they are not qualified to perform the response work. Written notice of disapproval, including a statement of the basis for such disapproval, shall be furnished by EPA to Respondent. EPA shall not unreasonably disapprove Respondent's choice of supervisory personnel, contractor or subcontractor.

3. In the event that EPA disapproves Respondent's selection of any supervisory personnel, contractor or subcontractor pursuant to Section A.2. of this Article, Respondent shall either:

a. select a substitute for such supervisory personnel, contractor or subcontractor and shall notify EPA, in writing, of such selection within thirty (30) days of receipt of EPA's notice of disapproval; or

b. if Respondent disputes EPA's disapproval, initiate the Dispute Resolution procedures set forth in Article XV with respect to such matter within fourteen (14) days of receipt of EPA's notice of disapproval.

AR200012

Respondent shall not proceed to perform any work pursuant to this Consent Order until EPA has approved Respondent's contractor, subcontractor and supervisory personnel for such work under this Article.

4. The provisions of this Section "A" shall be subject to the parties' Reservation of Rights as set forth in Article XVI.

Based on the foregoing, it is hereby AGREED TO AND ORDERED that the following work shall be performed:

B. Phase I - Removal Action

The objective of Phase I of the response action required by this Consent Order is to protect the public health, welfare, and the environment from past releases of hazardous substances and to prevent future releases from the Facility via infiltration of contaminants to the storm sewer, which flows offsite. Existing data that are of sufficient quality, reliability, and relevancy shall be used to the greatest extent possible to develop and conduct an immediate, efficient and effective plan.

Removal Work Plan

1. Within sixty (60) days of the effective date of this Consent Order, Respondent shall submit to EPA for its review and approval a plan ("Removal Plan") for preventing the infiltration of contamination from the Facility to the city storm sewer and any discharge of such contamination off-site. This Plan shall include, but not be limited to, the following measures, and shall include a schedule for commencement and completion of such measures:

AR200013

a. The discontinuation of use, the plugging and the removal of those portions of the storm sewer in and/or along which hazardous substances have been shown to be present by previous sampling including sampling performed by EPA, the Commonwealth of Virginia, local governmental agencies, Respondent or any other person or entity on behalf of Respondent. The removal of those portions of the storm sewer shall be coordinated with the construction of a new storm water conveyance system.

b. Construction of a new storm water conveyance system to replace the removed portions of the storm sewer. The specifications (i.e., materials, location, dimension, etc.) for such replacement system shall be described in the Removal Plan. Temporary construction shall be provided to accommodate storm water flow during removal and construction.

c. Sampling and analysis of soils in the path of the proposed replacement storm water conveyance system. Samples shall be taken at surficial intervals throughout the width and length of the abandoned portions of the storm sewer, the width of the proposed replacement conveyance device, as described pursuant to subparagraph "b" above, and an additional thirty (30) feet laterally on each side of the proposed replacement conveyance device, for the entire length of the system. Samples at each surficial location shall be taken at the surface, and core samples shall be taken at specified depths through the shallow aquifer into the blue clay layer. Each core shall be visually inspected and all soil horizons will be described and logged.

AR200014

Each core and surface sample will undergo a pre-screen physical/chemical characteristic test. If high organic content is determined, a medium level gas chromatograph ("GC") screen analysis shall be performed, aimed at detecting and quantifying polycyclic aromatic hydrocarbons ("PAHs"), pentachlorophenol, phenols, naphthalene, benzo (a) pyrene and phenanthrene. If the samples do not exhibit a high organic content, a low level GC screen analysis shall be performed, also aimed at quantifying PAHs, pentachlorophenol, phenol, naphthalene, benzo (a) pyrene and phenanthrene. The phenol, naphthalene, benzo (a) pyrene and phenanthrene values will be used to evaluate the need for further GC/MS analysis or soil removal. If further GC/MS analysis is required to determine the extent of removal, sample extracts will be analyzed according to USEPA CLP protocol for appropriate compounds.

Respondent shall analyze a specified number of the pre-screened samples for total chlorinated dibenzo-p-dioxins ("PCDDs") and total chlorinated dibenzofurans ("PCDFs"). The concentrations of total PCDDs and PCDFs will include, at a minimum, the concentrations of the appropriate tetra, penta, hexa, hepta and octa homologues. If a consistent relationship between the concentration of pentachlorophenol and the concentrations of PCDDs and PCDFs for each sample can be established, Respondent need not analyze every remaining sample for PCDDs and PCDFs, but shall analyze a sufficient number of such samples to enable Respondent to characterize the concentrations and distribution pattern of any PCDDs and PCDFs in the sampled soils. If a consistent relationship between the

AR200015

concentration of pentachlorophenol and the concentration of PCDDs and PCDFs cannot be established, Respondent shall analyze each remaining pre-screened sample for PCDDs and PCDFs, unless Respondent can demonstrate, in writing, that analyzing fewer than all such samples is technically sufficient to enable Respondent to characterize the concentrations and distribution pattern of PCDDs and PCDFs in the sampled soils. Any such demonstration shall specify the number of pre-screened samples which Respondent proposes to analyze for PCDDs and PCDFs.

Based on the results of the sampling described above, and after review with Respondent's consultants, EPA shall determine whether additional sampling is necessary to determine the presence of hazardous substances in soils at levels which may present a threat to public health, welfare, or the environment. If EPA determines that such additional sampling and analysis is necessary, EPA shall so notify Respondent in writing and shall specify the additional sampling and analysis which is needed, and provide a written explanation therefore. Respondent shall thereafter either (1) perform such sampling and analysis within the time period allowed for such additional sampling in the approved work plan; or (2) in the event Respondent disputes EPA's determination, initiate the Dispute Resolution procedures under Article XV with respect to such matter.

The provisions of this subparagraph shall be subject to Dispute Resolution under Article XV and the parties' Reservation of Rights as set forth in Article XVI.

AR200016



All sampling and analyses performed under this subparagraph shall be performed in accordance with the requirements of Paragraph X of this Consent Order, except as otherwise expressly provided in this subparagraph. Respondent shall submit the written results of laboratory analyses of all samples obtained pursuant to this subparagraph, including QA/QC data, to EPA within fourteen (14) days of Respondent's receipt of such analyses.

d. Based on the results of the sampling and analyses conducted pursuant to subparagraph "c" above, submission of a proposal describing the level to which contaminated soils located within the width boundaries described in subparagraph "c" shall be excavated (the "cleanup level") and explaining how such level satisfies the criteria below. The cleanup level shall be established at that level which (1) ensures removal of all soils for which levels of contamination by hazardous substances may present a threat to public health, welfare and the environment, and (2) satisfies the requirements of CERCLA and the NCP.

EPA shall review Respondent's proposed cleanup level and any supporting documentation and shall notify Respondent, in writing, of its approval or disapproval of the proposed cleanup level. In the event that EPA disapproves the proposed cleanup level, EPA shall explain in writing the basis for such disapproval and shall specify modifications to the proposal. Thereafter, Respondent shall either (1) revise the proposed cleanup level in accordance with EPA's specifications and submit such revised proposal to EPA, in writing, within thirty (30) days of receipt of EPA's notice of disapproval, or (2) if Respondent disputes EPA's determination, initiate the Dispute Resolution procedures of Article XV with respect to such matter.

AR200017

The terms of this subparagraph "d" shall be subject to the parties' Reservation of Rights as set forth in Article XVI.

e. Preparation and submittal to EPA of a written plan providing for the excavation of soils located within the width boundaries described in subparagraph "c" to the specified cleanup level ("Excavation Plan"). Such plan shall include a schedule for performance of such excavation and related work. EPA shall review such Excavation Plan and shall notify Respondent, in writing, of its approval or disapproval of the Excavation Plan. In the event that EPA disapproves of the Excavation Plan, EPA shall notify Respondent, in writing, of the deficiencies of such plan and shall specify modifications to the plan. Thereafter, Respondent shall either (1) submit to EPA, within thirty (30) days of receipt of EPA's notification of disapproval, an Excavation Plan modified in accordance with EPA's specifications, or (2) if Respondent disputes EPA's disapproval, initiate the Dispute Resolution procedures of Article XV with respect to such matter.

The terms of this subparagraph "e" shall be subject to the parties' Reservation of Rights as set forth in Article XVI.

f. Commencement of excavation in accordance with the Excavation Plan referenced in subsection "e" within sixty (60) days of approval of such plan.

g. Treatment, storage, disposal or beneficial use, reuse, recycling or reclamation of all soils and related refuse excavated pursuant to Phase I above, in a manner consistent with all applicable federal, state and local laws and regulations, as

provided by the NCP § 300.65. The Removal Plan shall describe the manner in which such soils shall be managed, and the name, address, and telephone number of any off-site facilities or transporters at which or by which such soils shall be managed or transported.

h. Replacement of all excavated soils with clean fill as necessary to support construction of a replacement storm water conveyance system.

i. Submittal to EPA of a written safety plan describing occupational safety measures to be implemented at the Facility during Phase I Removal activities.

2. EPA shall review the Removal Plan and shall advise Respondent, in writing, of its approval or disapproval of such Plan. In the event EPA disapproves the Plan, EPA shall notify Respondent, in writing, of the deficiencies of the Plan, and shall specify modifications to the Plan. Thereafter Respondent shall either: (a) submit to EPA, within thirty (30) days of receipt of EPA's notice of disapproval, the Removal Plan as modified in accordance with EPA's specifications; (b) if Respondent disputes EPA's disapproval, initiate the Dispute Resolution procedures of Article XV with respect to such matter; or (c) notify EPA, in writing, within five (5) days of receipt of EPA's notice of disapproval, of Respondent's decision not to complete the work plan in accordance with EPA's specifications. In the event that Respondent notifies EPA under (c), or in the event that Respondent proceeds under (b) and notifies EPA, in writing, within five (5) days of receipt of EPA's decision under Article XV, of its refusal to complete the Removal Work Plan in accordance with

EPA's specifications, Respondent shall be relieved of any further obligation to perform the work required under Article VIII, Section B of this Consent Order.

The terms of this paragraph "2" shall be subject to the parties' Reservation of Rights as set forth in Article XVI.

3. Respondent shall begin work required by the Removal Plan within thirty (30) days of receipt of EPA's approval of the Plan.

4. Respondent shall verbally notify EPA of completion of all of the activities described in the Removal Plan within 48 hours of such completion and shall furnish to EPA, within thirty (30) days of such completion, documentation establishing that such activities were performed in accordance with the Removal Plan and this Consent Order.

C. Phase II - Remedial Investigation and Feasibility Study

1. Within ninety (90) calendar days of the effective date of this Consent Order, the Respondent shall submit to EPA a plan for a complete Remedial Investigation and Feasibility Study ("RI/FS Work Plan"). This plan shall be developed in accordance with the EPA Remedial Investigation and Feasibility Study guidance documents entitled "Guidance on Remedial Investigations Under CERCLA," EPA/540/G-85/002 (June 1985) and "Guidance on Feasibility Studies Under CERCLA," EPA/540/G-85-003 (June 1985), and the "Interim Guidance on Superfund Selection of Remedy" (December 24,

AR200020

1986), which have been provided to the Respondent by EPA. As described in the foregoing documents, the RI/FS Work Plan must include: (1) a sampling plan (including a plan for sampling of the inlet at the end of the storm sewer and selected locations in the South Branch of the Elizabeth River which addresses the requirements set forth in the Memorandum of the Bioassessment Task Group entitled "Atlantic Wood Industries - Requirements for Inlet Study" (November 18, 1986) (a copy of which has been provided to Respondent)), (2) a health and safety plan, (3) a community relations plan, (4) a statement of whether any applications for any permits are contemplated, (5) a description of chain of custody procedures, and (6) a quality assurance/quality control plan which satisfies the requirements of Article X of this Consent Order.

In addition to the foregoing, the RI/FS Work Plan shall provide for the collection, evaluation and presentation of all information which must be considered by the President, or any representative of the President, in selecting and implementing a remedial action for the Facility in accordance with the terms of Section 121 of CERCLA, 42 U.S.C § 9621.

2. EPA shall notify Respondent in writing of EPA's approval or disapproval of the RI/FS Work Plan or any part thereof within approximately 45 days of receipt, or more if needed. In the event of disapproval of the RI/FS Work Plan or any part thereof, EPA shall notify Respondent, in writing, of the deficiencies of the RI/FS Work Plan and shall specify modifications to the RI/FS Work Plan. Thereafter, Respondent shall either: (a) submit to EPA, within thirty (30) days of Respondent's receipt of notice of EPA's

AR200021

disapproval of the RI/FS Work Plan, an RI/FS Work Plan revised in accordance with EPA's specifications; or (b) if Respondent disputes EPA's disapproval or specified modifications, initiate the Dispute Resolution procedures of Article XV with respect to such matter; or (c) notify EPA in writing, within five (5) days of receipt of EPA's notice of disapproval, of its decision not to complete the RI/FS Work Plan in accordance with EPA's specified modifications. In the event Respondent notifies EPA under (c), or in the event Respondent proceeds under (b) and Respondent notifies EPA, in writing, within five (5) days of receipt of EPA's decision under Article XV, of its refusal to complete the RI/FS Work Plan in accordance with EPA's decision, Respondent shall be relieved of any further obligation to perform the RI/FS under this Consent Order. The terms of this paragraph "2" shall be subject to the parties' Reservation of Rights as set forth in Article XVI.

3. Respondent shall implement the tasks described in the approved RI/FS Work Plan which will be attached to and incorporated into this Consent Order. This work shall be conducted in accordance with the EPA RI/FS guidance documents and with the standards, specifications, and schedule contained in the RI/FS Work Plan.

4. Within seven (7) days of approval of the RI/FS Work Plan by EPA, the Respondent shall commence Task 1 of the RI/FS Work Plan. Thereafter, Respondent shall follow the schedule contained in the RI/FS Work Plan.

AR200022

5. Respondent shall provide monthly written progress reports to EPA according to the schedule contained in the RI/FS Work Plan. At a minimum, these progress reports shall: (1) describe the actions which have been taken toward achieving compliance with this Consent Order, (2) include all results of sampling and tests and all other data received by the Respondent, and (3) include all plans and procedures completed subsequent to and pursuant to EPA approval of the RI/FS Work Plan during the month, as well as such actions, data, and plans which are scheduled for the next month. These reports are to be submitted to EPA by the tenth day of each month following the effective date of this Consent Order.

6. Respondent shall provide preliminary and final reports to EPA according to the schedule contained in the RI/FS Work Plan.

7. EPA shall review the preliminary and final reports and shall notify the Respondent, in writing, of EPA's approval or disapproval of these reports or any part thereof within 45 days (or more, if necessary) of receipt of the reports. In the event that EPA disapproves any such report, EPA shall notify Respondent, in writing, of any deficiencies of the report and shall specify modifications to the report. Thereafter, Respondent shall either (a) submit to EPA within thirty (30) days of receipt of EPA's notice of disapproval, such report revised in accordance with EPA's specifications or (b) if Respondent disputes EPA's disapproval or specified modifications, initiate the Dispute Resolution procedures of Article XV with respect to such matter. EPA shall have the right to modify the final RI or FS report submitted by Respondent

AR200023

under this Section, as EPA deems appropriate, after exhaustion of the review and approval and dispute resolution procedures applicable to such reports under this Section. Nothing in this Paragraph is intended to expand the work required in the approved RI/FS Work Plan.

The terms of this paragraph "7" shall be subject to the parties' Reservation of Rights as set forth in Article XVI.

8. Documents, including reports, approvals, disapprovals and other correspondence to be submitted pursuant to this Consent Order shall be sent by certified mail to the Project Coordinators identified in Paragraph IX.

9. If, because of the discovery of new information or unexpected contingencies during the conduct of work described in the RI/FS Work Plan, EPA determines that it is necessary to perform tasks at the Facility, such as remedial investigatory work and/or engineering evaluations, in addition to those required by, or completed pursuant to, the approved RI/FS Work Plan (hereinafter "additional tasks"), EPA shall provide written notice and an explanation of such determination and shall set forth in detail the additional tasks it has determined are necessary. Within thirty (30) days of receipt of EPA's determination and explanation regarding the performance of additional tasks, Respondent shall advise EPA, in writing, whether Respondent is willing to perform such additional tasks and, if so, Respondent shall submit, within thirty (30) days thereafter, a proposed amendment to the RI/FS Work Plan addressing the additional tasks. The procedures set forth in, and the substantive terms of,

AR200024



Article VIII.C.2. shall apply to the approval or disapproval of the proposed amendment. If the proposed amendment is approved, the provisions of Article VIII.C.3., 5., 6., 7. and 8. shall apply to the performance of the additional tasks. If Respondent does not advise EPA of its willingness to perform such additional tasks within the time allowed for such election, EPA shall have the right to perform all or part of such additional tasks and seek to recover from Respondent or other responsible parties the costs of performing such additional tasks under CERCLA Section 107(a), 42 U.S.C. § 9607(a), and/or to take any action authorized by CERCLA or any other law to compel Respondent to perform such additional tasks. Such additional tasks shall not be considered to be requirements of this Consent Order and Respondent shall incur no penalty under this Consent Order for failure to perform such additional tasks. The terms of this paragraph "9" shall be subject to the parties' Reservation of Rights as set forth in Article XVI.

#### IX. DESIGNATED PROJECT COORDINATORS

EPA and the Respondent each have designated Project Coordinators. Each Project Coordinator shall be responsible for overseeing implementation of this Consent Order. The EPA Project Coordinator will be EPA's designated representative at the site. To the maximum extent possible, communications between the Respondent and EPA and all documents, including reports, approvals, and other correspondence concerning activities performed pursuant to the terms and conditions of this Consent Order, shall be directed through the Project Coordinators.

AR200025

EPA and Respondent shall each have the right to change their respective Project Coordinators. Such a change shall be accomplished by notice to the other party in writing at least five (5) days prior to the change.

The EPA Project Coordinator shall have the authority to halt, conduct, or direct any tasks required by this Consent Order and/or any response actions or portions thereof when conditions present an immediate risk to public health or welfare or the environment.

The absence of the EPA Project Coordinator from the Facility shall not be cause for the stoppage of work, unless otherwise directed by EPA.

The designated EPA Project Coordinator is:

Michael Bass  
EPA Region III  
841 Chestnut Street  
Philadelphia, Pennsylvania 19107  
Telephone No. (215) 597-0985

The designated Project Coordinators for the Respondent are:

Jeffrey A. Smigel, P.E.  
Chief Environmental  
Engineer  
Atlantic Wood Industries, Inc.  
P.O. Box 1608  
Savannah, Georgia 31498  
(912) 964-7191

Michael J. Murphy  
Environmental Strategies  
Corporation  
8521 Leesburg Pike,  
Suite 650  
Vienna, Virginia 22180  
(703) 821-3700

X. QUALITY ASSURANCE

Respondent shall use quality assurance, quality control and chain of custody procedures in accordance with guidance provided in "EPA NEIC Policies and Procedures Manual", May 1978, revised November 1984, EPA-330/9-78-001-R and "Interim Guidelines

AR200026

and Specifications for Preparing Quality Assurance Project Plans," December 1980, QAMS-005/80, while conducting all sample collection and analysis activities required by this Consent Order. The Respondent shall consult with EPA in planning for, and prior to, all sampling and analysis as detailed in the Removal Plan and RI/FS Work Plan. In order to provide quality assurance and maintain quality control regarding all samples collected pursuant to this Consent Order, the Respondent shall:

1. Use a laboratory(ies) which has a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80.
2. Ensure that EPA personnel and/or EPA authorized representatives are allowed reasonable access to the laboratory(ies), records and personnel utilized by Respondent for analysis of samples collected pursuant to this Consent Order.
3. Prepare a Quality Assurance/Quality Control Plan (QA/QC Plan) for the collection and analysis to be conducted pursuant to this Consent Order. The QA/QC Plan shall be submitted to the EPA Project Coordinator for review and approval prior to initiating any field investigations. The QA/QC Plan (and sampling plans if prepared as separate documents) must be submitted to EPA as part of the site Work Plans required in Article VIII of this Consent Order. The plan shall set forth, in detail, the data quality objectives,

sample collection procedures and data analysis procedures to ensure that the objectives are met. QAMS-005/80 shall be used as guidance in the preparation of the QA/QC Plan; additional guidance may be provided by EPA as requested.

4. Ensure that the laboratory(ies) analyzing samples required by this Consent Order shall use the methods and submit the deliverables described in the current "Statement of Work of the EPA Contract Lab Program." (Current copies of this document, as well as copies of any other manual or guidance mentioned in this section, are available from the Environmental Services Division ("ESD") QA Section, Annapolis, Maryland at (301) 224-2740.) If any parameter to be analyzed is not one of the parameters for which Contract Laboratory Program ("CLP") methods are available, the laboratory shall use methods which are EPA approved and which are described in the QA/QC Plan.
5. Ensure that any laboratory(ies) analyzing samples pursuant to this Consent Order must demonstrate its capability to perform analyses in compliance with CLP requirements through the analysis of Performance Evaluation ("PE") samples prior to conducting any analysis. Analysis of PE samples may be waived if the laboratory has analyzed PE samples submitted by EPA or a state agency within the past six (6) months. Documentation

AR200028

of the prior PE sample analysis must be submitted to the EPA Project Coordinator for verification.

6. Conduct an audit of the laboratory(ies) that will analyze samples from the site at some point during the time such laboratory(ies) is conducting analyses (to be specified in the QA/QC Plan). The audit will be conducted to verify analytical capability. Audit reports must be submitted to the EPA Project Coordinator within fifteen (15) days of completion of the audit. Respondent must report serious deficiencies (anything which impacts the data quality in which the significant quality control criteria has not been met) within twenty-four (24) hours of the time Respondent knows or should have known of the deficiency. Corrective actions are to be taken immediately. CLP laboratory auditing forms can be used as a guide to identify such deficiencies. The forms have been prepared to match CLP requirements. Laboratories which are Superfund Contract Labs ("CLP Labs") or EPA Region III approved dioxin labs need not be audited.
7. Conduct at least one appropriate field audit (to be described in the QA/QC Plan) during initial sampling activities to verify that field samplers are correctly following sampling procedures described in the QA/QC and/or sampling plans. A report of the field audit must be sent to the EPA Project Coordinator within

AR200029

fifteen (15) days of completion of the audit.

Respondent must report serious deficiencies within twenty-four (24) hours of the time Respondent knows or should have known of the deficiency. Corrective actions are to be taken immediately.

8. Provide data validation of analyses done by the laboratory(ies) (to be described in the QA/QC Plan). This data validation shall determine data utility and shall be performed in accordance with the Functional Guidelines for Data Review (available from ESD QA Section) for data derived by CLP methods, or if another method is used, the data validation shall be performed in accordance with the QA/QC data validation criteria set forth in that method. For methods lacking QA/QC data validation protocols, Respondent must establish validation criteria such as those in Section 8 of the EPA Series Methods in 40 C.F.R. § 136. The appropriate quality assurance data validation summary reports should be submitted, along with sample data and summary sheets, to the EPA Project Coordinator at the time final sample results are provided to EPA.

#### XI. ACCESS TO OFF-SITE AREAS

To the extent that the property subject to work to be performed under this Consent Order is owned by, or subject to a real property interest of a party or parties other than those

AR200030

bound by this Consent Order, Respondent will use its best efforts to obtain a site access agreement from such party or parties within thirty (30) days of the effective date of this Consent Order, in the case of work to be performed under Article VIII, Phase I, and within thirty (30) calendar days of the approval of the RI/FS Work Plan, in the case of work to be performed under Article VIII, Phase II. Any such agreement shall provide reasonable access to EPA, the Virginia Bureau of Hazardous Waste Management ("VBHWM"), the Virginia Water Control Board ("VWCB") and their authorized representatives. In the event that an access agreement is not obtained within the time designated above, EPA shall be notified immediately of Respondent's inability or failure to obtain such agreement. Respondent shall also notify EPA in writing of all efforts made to obtain such an agreement. Thereafter, EPA, in its sole discretion, may seek to obtain access on behalf of Respondent. If access is not obtained by EPA on Respondent's behalf, the approved Removal Plan and RI/FS Work Plan may be modified by Respondent, with EPA's approval, to take account of such lack of access.

The provisions of this Article XI shall be subject to the Dispute Resolution procedures of Article XV and the parties' Reservation of Rights as set forth in Article XVI.

#### XII. SAMPLING, ACCESS, AND DATA/DOCUMENT AVAILABILITY

The Respondent shall make the results of all sampling and/or tests or other data generated by the Respondent, or on the Respondent's behalf, with respect to implementation of this Consent

AR200031

Order, available to EPA and, in the case of work to be performed under Article VIII, Phase II, shall submit these results in regular monthly progress reports as described in Section B.6. of such Article. EPA will make available to the Respondent the results of sampling and/or tests or other data similarly generated by EPA upon completion of QA/QC for such sampling, tests or data.

At the request of EPA, the Respondent shall allow split or duplicate samples to be taken by EPA and/or its authorized representatives, of any samples collected by the Respondent pursuant to the implementation of this Consent Order. The Respondent shall notify EPA no later than five (5) days in advance of any planned sample collection activity.

EPA and/or any EPA-authorized representative shall have the authority to enter and freely move about all property at the Facility at all reasonable times for the purpose of, inter alia: inspecting records, operating logs, and contracts related to the work undertaken at the Facility pursuant to this Consent Order; reviewing the progress of the Respondent in carrying out the terms of this Consent Order; conducting such tests or samples as EPA or the EPA Project Coordinator may deem necessary; using a camera, sound recording, or other documentary type equipment; and verifying data submitted to EPA by the Respondent. The Respondent shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order. All parties with access to the Facility pursuant to this paragraph shall comply with all approved health and safety plans.

AR200032



Nothing in this Paragraph shall be construed to limit EPA's authority under any statute or common law to enter upon and inspect any property.

The Respondent may assert a confidentiality claim, if appropriate, covering part or all of the information requested by this Consent Order pursuant to 40 C.F.R. § 2.203(b). Such an assertion shall be adequately substantiated when the assertion is made. Analytical data shall not be claimed as confidential by the Respondent. Information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA without further notice to the Respondent.

Respondent and EPA agree that they shall preserve, during the pendency of this Consent Order and for a minimum of six (6) years after its termination, all records and documents in their possession or in the possession of their divisions, employees, agents, accountants or contractors which relate in any way to work performed under this Consent Order, despite any document retention policy to the contrary. After this six-year period, the Respondent shall provide notice to EPA of its intention to destroy such documents at least thirty (30) days prior to the destruction of documents. Upon request by EPA, the Respondent shall make available to EPA such records or copies of any such records.

EPA shall furnish to Respondent, as soon as practicable after it becomes available, a copy of the final Scope of Work for the EPA oversight contractor retained by EPA in connection with the performance of the RI/FS at the Facility.

AR200033

### XIII. DELAY IN PERFORMANCE; STIPULATED PENALTIES

For each week during which Respondent fails to submit a report or document or otherwise fails to satisfy the schedule requirements of this Consent Order, including any schedule requirements of any plan approved by EPA under this Consent Order, EPA, when and as provided below, may assess against Respondent, and Respondent shall pay, upon demand by EPA, the sums set forth below as stipulated penalties. Checks shall be made payable to "Hazardous Substances Superfund" and shall be addressed to:

EPA - SUPERFUND  
P.O. Box 371003M  
Pittsburgh, Pennsylvania 15251

In recognition of Respondent's expressed intent and demonstrated interest to implement this Consent Order expeditiously, the assessment of stipulated penalties is not anticipated. Stipulated penalties need not be assessed if, in EPA's sole judgment, Respondent's failure to comply with the requirements of this Order occurs despite bona fide attempts to comply. If assessed, stipulated penalties shall be deemed to have accrued in the amount of \$500.00 for the first week or any portion thereof, \$1,000.00 for each week or portion of a week thereafter through the fourth week, and \$2,000.00 for each week thereafter, for each failure to submit a plan, report or other document or to comply with a schedule as required by this Consent Order. A copy of all checks for stipulated penalties assessed hereunder shall be sent to the EPA Project Coordinator.

Delay in compliance/performance by the Respondent for which a stipulated penalty has been assessed shall not also subject Respondent to statutory fines, penalties and/or punitive damages for such delay.

AR200034

EPA's failure to exercise its discretion to waive the assessment of stipulated penalties under this Article shall not be raised as a defense by Respondent in any action by the United States against Respondent to collect stipulated penalties which have been assessed.

#### XIV. FORCE MAJEURE

Respondent shall promptly notify EPA, orally, of any delay or anticipated delay in the performance of any work or submission of any plan, report or other document required hereunder. Respondent shall confirm notification of such delay or anticipated delay in writing within seven (7) days of oral notification. Such written notification shall describe fully the nature of the delay, the actions that will be taken to mitigate further delay, the timetable by which the actions in mitigation of the delay will be taken, and whether the delay was or will be caused by circumstances beyond Respondent's reasonable control which could not be overcome by the exercise of due diligence ("force majeure event"). If EPA agrees that the delay or anticipated delay has been or will be caused by a force majeure event, the time for performance hereunder shall be extended for a period equal to the delay resulting from such event. Respondent shall adopt all reasonable measures to avoid or minimize delay. Failure of the Respondent to comply with the notice requirements of this Article shall render this Article void for Respondent and shall constitute a waiver of Respondent's right to request a waiver of the scheduling requirements of this Consent Order.

AR200035

Any failure to timely complete the work or submit any plan, report or other document that results from a force majeure event shall not be deemed a violation of this Consent Order and shall not make Respondent liable for the stipulated penalties contained in Article XIII of this Consent Order. Increased costs or performance of the work required by this Consent Order or changed economic circumstances of Respondent shall not be considered force majeure events. Respondent shall have the burden of proving that the delay was caused by a force majeure event and that Respondent took all reasonable measures to avoid or minimize the delay. If EPA and Respondent cannot agree whether a particular delay was caused by a force majeure event, the dispute shall be resolved in accordance with the Dispute Resolution provisions of Article XV.

#### XV. DISPUTE RESOLUTION

If Respondent disputes any EPA notice of disapproval, determination or decision made pursuant to this Consent Order, Respondent shall notify EPA in writing of such dispute within fourteen (14) days of receipt of such decision. Receipt by EPA of such notification shall constitute "initiation of Dispute Resolution procedures" for the purposes of this Consent Order. EPA and Respondent shall have an additional fourteen (14) days from the receipt by EPA of the notification of objection to reach agreement on the matters in dispute. If agreement cannot be reached on any issue within this latter fourteen (14) day period, EPA shall furnish to Respondent a written statement of its decision with an explanation therefore. Receipt of such statement of decision by Respondent shall

constitute "final resolution" of the dispute as that term is used in this Consent Order. Thereafter, Respondent shall either ( 1 ) perform the work that was the subject of the dispute in accordance with EPA's decision or (2) in the case of a dispute concerning the adequacy of the Removal Work Plan or RI/FS Work Plan, notify EPA of its refusal to complete such Work Plan in accordance with EPA's decision within five (5) days of receipt of EPA's decision (in which case Respondent shall be relieved of any further obligation under this Consent Order to perform the Removal or RI/FS, as applicable).

The period for resolution of disputes hereunder may be enlarged by written agreement of the parties hereto.

Upon Respondent's request, the time for performance of the work to which any good faith dispute under this Article relates shall be extended for a period equal to the time required to achieve final resolution of the dispute under the terms of this Article. If a delay resulting from an extension of time for performance of work which is or was the subject of a dispute hereunder necessarily affects the timing of performance of other work required by this Consent Order, the time for performance of such other work shall also be extended as reasonably necessary to account for such delay.

The terms of this Article XV shall be subject to the parties' Reservation of Rights as set forth in Article XVI.

#### XVI. RESERVATION OF RIGHTS

A. Except as provided in Article XIII, nothing in this Consent Order shall be construed to limit such rights as EPA may have to seek and obtain legal or equitable relief to enforce the terms of

AR200037

this Consent Order, including any rights EPA may have to seek and obtain injunctive relief, statutory fines or penalties or punitive damages, nor shall anything in this Consent Order be construed to limit any rights or defenses Respondent may have with respect to any action by EPA to obtain such relief, except as provided in the last sentence of the second paragraph of Article I.

B. Nothing in this Consent Order shall be construed to limit the right of EPA to take any response action or to take enforcement action against Respondent, under CERCLA or any other law, with respect to any matter beyond the scope of this Consent Order, nor shall anything in this Consent Order limit any rights or defenses which Respondent may have with respect to any such enforcement or response action.

C. EPA may elect to perform all or part of the work required to be performed by Respondent under this Consent Order, in lieu of Respondent, whenever ---

1. work required to be performed by Respondent has been the subject of Dispute Resolution proceedings under Article XV, and Respondent has not, within five (5) days of receipt of EPA's determination under such Article, notified EPA in writing of its intention to perform the work in dispute in accordance with EPA's determination;

2. notwithstanding the pendency of Dispute Resolution proceedings under Article XV, if EPA determines, based on past performance of work by Respondent under this Consent Order, representations by Respondent or its contractors or agents, or other existing

AR200038

factual evidence, that such work has not been, is not being or will not be performed in a manner which is consistent with the terms of this Consent Order, the NCP or CERCLA, or which is adequate to protect the public health or welfare or the environment, within the meaning of CERCLA; or

3. Respondent proceeds under Article VIII.B.2(c) or C.2(c).

In the event that EPA elects to perform the work in lieu of Respondent, EPA shall notify Respondent, in writing, of such election and, to the extent not already relieved of such obligation under other provisions of this Consent Order, Respondent shall be relieved of any further obligation to perform such work under this Consent Order.

D. EPA shall retain such rights as it may have to bring an action against Respondent and any other responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), or any other applicable law, to recover from Respondent or such other responsible party:

1. the cost of (a) any additional tasks performed by EPA under the provisions of Article VII.C.9.; (b) work performed by EPA in lieu of Respondent under Article XVI, except work described in subparagraph (c) of this paragraph; and (c) work for which Respondent has been relieved of its obligation of performance under Article VIII.B.2. and C.2.

2. the costs of response and oversight required to be paid by Respondent under Article XVII to the extent such costs are not paid by Respondent under such Article.

AR200039

Respondent shall retain whatever rights and defenses it may have respecting any action by EPA to recover such costs, except as otherwise provided herein.

E. The terms of this Article XVI shall not be subject to the Dispute Resolution provisions of Article XV.

XVII. REIMBURSEMENT OF COSTS

EPA shall furnish to Respondent on a quarterly-basis, beginning ninety (90) days after the effective date of this Consent Order, a copy of the most recently updated Financial Management System statement regarding costs incurred and paid by EPA under CERCLA in connection with response activities at the Facility.

No later than ninety (90) days after the end of each calendar year, EPA shall submit to Respondent an itemized statement of all response and direct oversight costs (but not indirect costs) incurred by the United States in connection with this Consent Order during such calendar year. Such statement shall be prepared in accordance with all applicable federal laws, regulations and policies respecting documentation and collection of CERCLA response costs by the United States from a third party and, to the extent not inconsistent with the foregoing, in accordance with generally accepted accounting principals. Respondent shall, within sixty (60) days of receipt of the statement, remit a check for the amount of those costs, payable to the Hazardous Substances Superfund. Checks should specifically reference the Facility and shall be addressed to:

U.S. Environmental Protection Agency  
Superfund Accounting  
P.O. Box 371003M  
Pittsburgh, PA 15251

AR200040



A copy of the transmittal letter shall be sent to the EPA Project Coordinator and the Regional Hearing Clerk.

XVIII. OTHER CLAIMS

Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation not a signatory to this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

XIX. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable federal, state and local laws and regulations.

XX. PUBLIC COMMENT

Upon submittal to EPA of an approved Feasibility Study Final Report, EPA shall make such Feasibility Study Final Report available to the public for review and comment for, at a minimum, a twenty-one (21) day period, pursuant to EPA's Community Relations Policy and consistent with the Section 300.67(d) of the NCP, 40 C.F.R. § 300.67, as revised by 50 Fed. Reg. 47912 at 47973 (November 20, 1985).

AR200041

Following the public review and comment period, EPA shall notify the Respondent of the remedial alternative selected for the Atlantic Wood facility. Nothing herein shall obligate Respondent to implement the remedial alternative selected by EPA.

XXI. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

The effective date of this Consent Order shall be the date on which it is signed by EPA. Respondent acknowledges that it has had adequate opportunity to confer with EPA before entry of this Consent Order.

This Consent Order may be amended by mutual agreement of EPA and Respondent. Such amendments shall be in writing and shall become effective on the date on which the amended Consent Order is signed by EPA.

XXII. TERMINATION AND SATISFACTION

The provisions of this Consent Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that Respondent has demonstrated, to the satisfaction of EPA, that all of the terms of this Consent Order, including any additional tasks which EPA has determined to be necessary, have been completed, or upon EPA notification to Respondent of the selected remedial alternative pursuant to Article XX.

XXIII. COVENANT NOT TO SUE

Upon termination of this Consent Order pursuant to Article XXII, including reimbursement to EPA as provided in Article XVII, EPA covenants not to sue Respondent for the cost or performance of any work or additional tasks performed by Respondent hereunder.

IT IS SO AGREED AND ORDERED:

ATLANTIC WOOD INDUSTRIES, INC.

Dated: 6-24-87

By: Charles B. Compton

CHARLES B. COMPTON  
President,  
Atlantic Wood Industries, Inc.

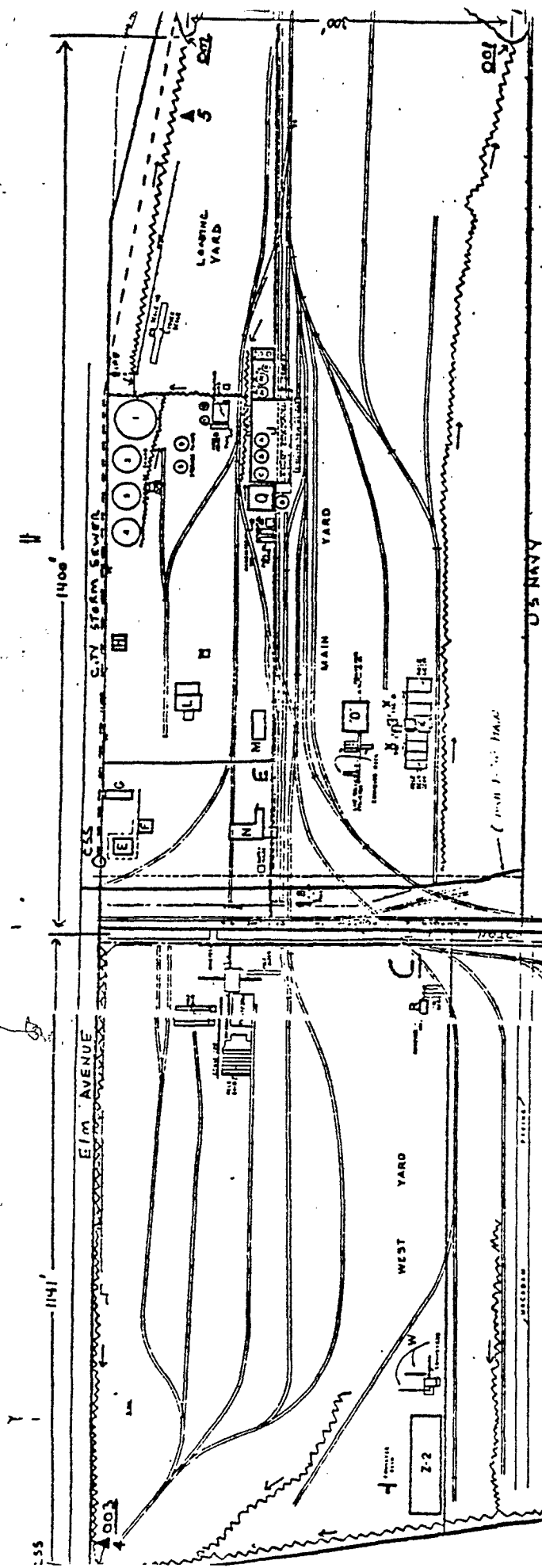
U.S. ENVIRONMENTAL PROTECTION AGENCY

Dated: 7/23/87

By: James M. Seif

JAMES M. SEIF  
Regional Administrator  
U.S. Environmental Protection Agency

AR200043



ATLANTIC WOOD INDUSTRIES, INC.  
 PORTSMOUTH, VIRGINIA  
 NOVEMBER 30, 1978

SCALE 1" = 200'

DATUM:  
 USCG  
 M.S.L. 1980

LEGEND  
 OPEN DITCH

RAIN WATER RUNOFF  
 COLLECTION AREAS

- AREA A TO 001
- AREA B TO 002
- AREA C-D TO 003
- AREA E TO CSS

CITY OF PORTSMOUTH PROPERTY